incremental cost to its own frame relay service, but the same backhaul for Intermedia would incur charges that would make the service cost prohibitive.

Intermedia did not arbitrate these complaints to a final public service commission order in the three states. Rather, following an interim ruling by an Administrative Law Judge finding in Intermedia's favor,[29] Ameritech and Intermedia reached a settlement of the dispute and Intermedia withdrew its petitions for arbitration. Nevertheless, this experience provides a graphic example of the potential anticompetitive results that could occur if transactions by which the ILEC purchases from the affiliate are not subject to scrutiny.

Intermedia posits that the Commission could eliminate most of these concerns by ruling that ILECs may not provide the same advanced services that their advanced service affiliates provide. Such a prohibition should cover the ILEC's resale of the affiliate's advanced services, and should also prohibit instances in which the ILEC purchases network functions or components from its affiliate that are essential to the service the ILEC provides. Such a rule would ensure that separate affiliates are truly independent from the ILEC, and that CLECs would not be placed at a competitive disadvantage vis a vis the affiliate. If the Commission chooses not to adopt such a rule, it must require that all transactions – sales from the ILEC to the affiliate and from the affiliate to the ILEC – must be nondiscriminatory, written, published in tariffs or on the internet for public inspection, and subject to Commission scrutiny.

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29 *Illinois Arbitration Proceeding*, 97 AB-002 *Hearing Examiner's Proposed Arbitration Decision,* dated June 16, 1997.

IV. THE COMMISSION SHOULD ADOPT NATIONALLY APPLICABLE COLLOCATION RULES THAT ADOPT THE BEST PRACTICES OF STATE REGULATORS

Intermedia strongly supports the Commission's establishment of national collocation standards in order to ensure that CLECs have reasonable and nondiscriminatory access to ILEC advanced services and network elements. Physical collocation of CLEC facilities in ILEC central offices is critical to their ability to interconnect with ILEC facilities required to provide advanced telecommunications services. However, ILECs increasingly are denying CLECs physical collocation due to a lack of space in central offices. Even where space is available, current rules have permitted ILECs to extract huge collocation charges which far exceed the reasonably necessary expenditures. Together these factors are erecting significant barriers to entry into the market for advanced services.

Further, in the wake of the *Iowa Utilities Board* holding that ILECs are not required under the Act to recombine all UNEs,[30] most ILECs have taken the position that CLECs must physically collocate at every point in the ILEC network where two UNEs must be connected. The enormous cost of physically collocating at every ILEC end office and tandem within a service area makes it cost prohibitive to serve any but the largest-volume customers, and effectively prevents CLECs from using UNEs made available by State commissions to provide ubiquitous service to the mass market. The result of requiring CLECs to physically collocate to

30 *Iowa Utilities Bd. v. F.C.C.*, 120 F.3d 753 (8th Cir. 1997).

obtain access to critical digital UNEs is that ILECs effectively deny CLEC access, because collocation space is either unavailable, or requires the expenditure of vast sums of money to condition collocation space in central offices.[31] Even when collocation space is available to CLECs, the lead times allegedly necessary to prepare the space have been unconscionable. It is therefore imperative that the Commission exercise its authority to establish national collocation standards.

A. The Commission Has The Authority To Establish National Collocation Standards

Despite the enactment of the pro-competitive provisions of the Act over two-and-a-half years ago, the cost of physical collocation remains prohibitive, and constitutes a barrier to competitive entry. Therefore, Intermedia agrees with the Commission's conclusion that it should exercise its authority under § 251(c)(3) to adopt national minimum collocation standards for nondiscriminatory collocation arrangements.[32] Furthermore, Intermedia submits that the Commission should concurrently exercise its authority under §§ 201 and 202 of the Act to establish cost-based rates for the collocation arrangements which it adopts as national standards. The Commission's authority to establish cost-based collocation rates derives from § 202(b) of the

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31 As Attachment A, *Bell Atlantic Collocation Site Summary*, available at http://www.bell-atl.com/tis/nycolloc.htm indicated that as of September 24, 1998, there were 6 central offices in New York where no physical collocation was available. Furthermore, 9 central offices were available only for physical collocation after the office has undergone costly space conditioning.

32 *NPRM at* ¶¶ 122-124.

Act, which requires that all charges be just and reasonable and empowers the Commission with the authority to prescribe such rules and regulations as necessary in the public interest to carry out the provisions of the Act. It was, of course, under this authority that the Commission established rates and changes for the physical and virtual collocation arrangements that are currently tariffed by the Tier 1 ILECs in their federal tariffs.[33] In addition, § 202(a) prohibits carriers from making any unjust or unreasonable discriminations in charges, practices, classifications, or regulations. The Commission should exercise this authority to ensure that competitors have reasonable and nondiscriminatory access to ILEC facilities.

Moreover, the Commission should clarify that disputes between ILECs and competitors regarding collocation arrangements can be resolved in the FCC's new "rocket docket" process which was recently implemented by the Commission as part of the amendment of the Commission's rules regarding procedures to be followed in filing complaints against common carriers.[34]

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33 *Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, CC Docket No. 94-97; *Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket 93-162.

34 *See Implementation of the Telecommunications Act of 1996–Amendment of Rule Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, CC Docket No. 96-238, Second Report and Order (rel. July 14, 1998).

B. The Commission Should Adopt As National Standards Several Innovative Collocation Rules Developed By State Commissions

State commissions across the country have expended enormous time and resources in fulfilling their obligations to implement the Act. In particular, their prodigious efforts have, or soon will, result in the adoption of innovative collocation proposals. The States of New York and Texas have led the way in promoting collocation solutions that address the real concerns of both ILECs and CLECs, and strike a balance between the interests of both parties. In adopting collocation standards to aid in the achievement of the goals of § 706, Intermedia submits that the Commission should adopt federal counterparts to the State collocation initiatives detailed below, so that competition brought about by competitive carriers will continue to flourish.

1. New York

a. *Enhanced Extended Links*

As part of the Bell Atlantic-New York ("BANY") § 271 proceeding before the New York Public Service Commission ("NYPSC"), BANY has committed to provide an

attractive alternative to physical collocation known as the Enhanced Extended Link ("EEL").[35] Under the EEL, the ILEC provides the unbundled loop in conjunction with central office multiplexing and transport to a CLEC's collocation node in another central office or to another point of presence. Requiring collocation in every end office limits a CLEC's ability to utilize modern network architecture, and forces CLECs, at least to some degree, to install facilities that mirror the ILEC's existing distributed network configuration. EELs alleviate this problem by allowing CLECs to collocate in one central office and serve end users served out of multiple neighboring end offices, thus reaching the maximum possible number of customers with a single collocation arrangement. Rather than collocate equipment in every end office, EELs enable CLECs to reach customers through a single transmission facility made up of a loop, multiplexing and transport that extends from the CLEC's point of interface to the customer premises.

EELs also maximize the utilization of collocation space. As competition develops, the demand for collocation space undoubtedly will increase. Requiring collocation for combining two lengths of a single transmission facility from a CLEC's point of interface to the customer premises would consume large amounts of collocation space with little if any corresponding benefit to ILECs, CLECs, or consumers. Thus, the EEL preserves scarce collocation space, and, by eliminating unnecessary collocation costs, dramatically reduces the

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35 New York Telephone Company's Proposed Revision to Tariffs P.S.C. No. 916 (July 23, 1998) ("BANY 916 Tariff"); NY Case 97-C-0271, Prefiling Statement of Bell Atlantic-New York at 10, *In the Matter of Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions pursuant to Section 252 of the Telecommunications Act of 1996, and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996,* (April 6, 1998) ("BANY Prefiling Statement"); Methods for CLEC Combination of Unbundled Network Elements, filed by BANY in NYPSC Case No. 98-C-0690 on May 27, 1998, at 6.

costs of providing service, and expands the customer base reachable by CLECs, making facilities-based competitive service available to smaller users and users in less densely populated areas. While EEL is now available as a tariffed service in New York, throughout the NY Recombination Proceeding, Intermedia has urged the NYPSC to define the EEL as a UNE to ensure that the EEL is available to CLECs permanently and at cost-based rates at all levels of service.[36]

To preserve available collocation space and to ensure that exorbitant collocation costs are not a barrier to entry, Intermedia urges the Commission to make the EEL available in connection with its promulgation of a national collocation standards. Requiring ILECs to provide the EEL at cost-based rates to support all telecommunications services will ensure that facilities-based carriers seeking to deploy advanced telecommunications networks will be able to do so in a timely and efficient manner.

b. *Shared cages*

Another innovative collocation proposal under consideration in New York in conjunction with BANY's 271 application allows collocated CLECs to share a single physical collocation cage. Under the proposal being considered in New York, one collocated CLEC may enter into agreements with other CLECs to share its collocation space. The availability of a

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36 *See Joint Comments of Intermedia Communications Inc., e.spire Communications, Inc., and Telergy, Inc. in Response to Bell Atlantic-New York's Proposed Revisions to its 914 and 916 Tariffs,* (filed Aug. 25,1998); *Joint Reply Comments of Intermedia Communications Inc., e.spire Communications, Inc., and Telergy, Inc. in Response to Bell Atlantic-New York's Proposed Revisions to its 914 and 916 Tariffs* (filed Sept. 2, 1998).

shared cage collocation arrangement is attractive to facilities-based CLECs because it significantly reduces collocation expenses and facilitates cross-connection from one collocated CLEC to another, thereby increasing competitive service alternatives to end users. In addition to being cost effective, shared cage arrangements help conserve the dwindling supply of physical collocation space and will allow greater numbers of CLECs to collocate in a given central office. This will allow a greater number of carriers to share the burden of the infrastructure costs associated with preparing a central office, and will significantly reduce the cost of collocation per CLEC. Shared collocation arrangements will eliminate a significant barrier to collocation-based competitive entry, and the Commission should adopt such arrangements as part of its national collocation standards.

2. Texas

a. *Unrestricted cross connects between collocated CLECs*

Many ILECs have restricted a CLEC's ability to establish cross-connections between its own collocated equipment and the equipment of another collocated CLEC. In some cases, such cross-connects are completely prohibited, while in other cases, ILECs allow electrical cross-connects, but prohibit optical connections. In many cases, ILECs require the CLEC to purchase tariffed services from the ILEC – which are not priced at TELRIC levels – to obtain such cross-connection. This restriction on cross connections between CLEC collocation arrangements is not only completely arbitrary and lacking in any policy or technical justification,

but it also imposes potentially enormous and unnecessary costs on CLECs.[37] The *Texas Arbitration* addressed this problem and indicated that collocated CLECs have an unrestricted right to connect collocation arrangements within the same central office, including arrangements that are located on different floors.[38] Pursuant to the decision in the *Texas Arbitration*, collocating CLECs are allowed to connect to the collocated space of another collocator within the central office and perform the cross connects themselves, including installation of associated physical structures and pulling cable from the CLEC's collocated space to the collocation space of another CLEC.[39]

As part of its national collocation standards, the Commission should adopt the *Texas Arbitration* approach, and clarify that CLECs have an unrestricted right to cross-connect

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37 BANY is currently attempting to force CLECs needing to cross-connect two non-contiguous collocation points in a central office to purchase BANY's tariffed Dedicated Transit Support ("DTS"), which consists, essentially, of the installation of the cables and associated support structures necessary to connect collocation arrangements. DTS is not a viable solution for CLECs for a number of reasons. First, it unnecessarily forces CLECs to rely on BANY to perform engineering, testing and troubleshooting functions. Second, using DTS results in the placement of superfluous BANY equipment, such as DACs, testing, and multiplexing equipment, in the cable configuration, which may result in the cable facility failing to meet CLEC service standards and design requirements. Moreover, such undefined equipment may also interfere with CLEC testing equipment and testing scenarios, thereby eroding quality for CLEC end users.

38 *See* Public Utility Commission of Texas, Arbitration Award, Issue No. 34, *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops,* Docket No. 16189 *et al.* (Sept. 30, 1997) ("*Texas Arbitration*").

39 The *Texas Arbitration* indicates that collocators are responsible for performing the physical connections within the collocator's cage; the ILEC will provide only the installation of the physical structure and the labor where collocators cannot physically pull the cable themselves (i.e. between collocation arrangements located on different floors). *Texas Arbitration* at Appendix A, page 22.

their collocation arrangements within the same central office, including facilities located on different floors of the central office. Further, the Commission should clarify that in cross-connection arrangements, ILECs can not require collocators to purchase dedicated racking service.[40] The Commission should also minimize the cost of cross connecting equipment by clarifying that to the greatest extent possible, CLECs will be allowed to perform themselves all work associated with installation of the cross connects.[41] Forcing CLECs to purchase an ILEC's tariffed wholesale cable transmission service rather allowing them to perform simple cross connects themselves imposes unnecessary and likely excessive costs on collocated CLECs. To the extent that it is technically necessary, Intermedia would agree to utilize both common cable racking and dedicated cable support to connect non-contiguous collocation points. Failure of the Commission to do so will result in CLECs being unable to perform simple connections at their own cost, and must instead being forced to pay the excessive ILEC rates for such services, and prevent CLECs from realizing any cost efficiencies they can generate by doing the connections themselves.

b. ***Provisioning intervals: standard intervals and liquidated damages for missed intervals***

Once CLECs clear the hurdle of completing the arduous application process for physical collocation space in ILEC central offices they face extremely long waits before the

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40 *See* BANY 914 Tariff.

41 *See Texas Arbitration*, at p. 22.

collocation space is actually turned over to them. However, ILECs routinely are unable to meet even the generous standard provisioning deadlines they enjoy. When ILECs miss deadlines for provisioning collocation space, CLECs are not only unable to provide service to new customers, but, in most cases, they have no recourse against the ILECs for missing the deadline. The result is that CLECs are at the complete mercy of the ILECs to provide collocation space in a timely fashion, and ILECs have no incentive to meet reasonable deadlines. To address the problems associated with the provisioning of collocation space, Intermedia asks the Commission to adopt as a national standard the physical collocation provisioning interval recently agreed to by Southwestern Bell in the 271 collaborative convened by the TXPUC.[42] In addition, the Commission should adopt the liquidated damages provision akin to the one contained in the Southwestern Bell/AT&T interconnection agreement.[43]

Under the SWB Provisioning Intervals, negotiated by CLECs and SWB in the Texas 271 collaborative, SWB must provision collocation space in 35 business days. Intermedia urges the Commission to adopt this interval as part of its national collocation standards. Under the SWB Agreement, AT&T has the right to liquidated damages when provisioning intervals for collocation are missed. In addition, the TXPUC has adopted rules that allow CLECs to obtain liquidated damages from ILECs who miss provisioning intervals for collocation arrangements.[44]

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42 *See* Attachment B, Southern Bell Performance Measures, Sec. X Collocation, appended to Letter of SWBT Senior Counsel Christian A. Bougeacq to ALJ Katherine D. Farroba (Sept. 21, 1998).

43 *See* Interconnection Agreement of Southwestern Bell Telephone and AT&T Communications of the Southwest, Inc., Attachment 17 (April 1, 1998) (hereinafter referred to as "SWBT/AT&T Agreement")(appended hereto as Attachment C).

44 *See* SWBT/AT&T Agreement.

Adoption of the Texas collocation intervals and liquidated damages provision will help break the ILEC stranglehold on competition by providing ILECs with an incentive to provide collocation arrangements in a timely manner, and provide CLECs with some recourse when intervals are missed.

3. New York and Tennessee: cageless collocation

The efficacy of cageless collocation is becoming increasingly recognized by both State regulators and even some ILECs. As the Commission noted in the *NPRM,* U S WEST is currently voluntarily offering a cageless collocation arrangement[45] In addition, cageless collocation arrangements are under consideration in Tennessee[46] and New York.[47]

There are two general varieties of cageless collocation. Under one form, CLECs establish physical collocation arrangements in areas around the ILEC main distribution frame ("MDF"), so that their equipment may be commingled with ILEC equipment. In such an arrangement, a CLEC may install and maintain its own equipment, or may hire an ILEC-approved contractor to do so. To the extent that there are security concerns, they can be addressed by requiring CLECs to utilize logs, security card access, inexpensive video camera

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45 Indeed, U S WEST is providing cageless collocation arrangements in 14 states pursuant to agreements with Covad Communications. NY Case 98-C-0690, *Proceeding on the Motion of the Commission to Examine Methods by Which Competitive Local Exchange Carriers Can Obtain and Combine Unbundled Network Elements,* Transcript of Technical Conference at 460 (June 30, 1998).

46 *See* appended hereto as Attachment D, *In re BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996,* Docket 97-00309, Vol. IIE of Transcript of Proceedings (May 6, 1998).

47 *See* BANY 914 Tariff.

technology, and contractual indemnification arrangements. ILECs cannot demonstrate that physical collocation around the MDF is not technically feasible under § 251(c)(6), and barring such a showing, the Commission should mandate that this capability be made available to CLECs, so long as space is available. These forms of commingled collocation are currently under consideration in the New York collaborative.

Another form of cageless collocation being considered by New York regulators, Separate Collocation Open Physical Environment, or "SCOPE," allows CLECs to collocate in a secured, but separate part of the ILEC central office. Under SCOPE, there is no cage enclosure around an individual CLEC's equipment; rather, different CLECs maintain their equipment in standard equipment racks that are lined up side-by-side. CLECs are responsible for the installation and maintenance of their own equipment, and at their option, may place a security door over the portion of the equipment racks that they occupy.[48] SCOPE uses a shared point of termination bay that may be shared with other CLECs using SCOPE, and the capacity of the bay can be expanded by adding increments to the frames on the bay.

Therefore, Intermedia urges the Commission to adopt, as part of its national collocation standards, rules requiring ILECs to make available both forms of cageless collocation arrangements. In so doing, the Commission should clarify that CLECs will be permitted to hire an ILEC-approved contractor to install and perform routine maintenance on their collocated equipment without the ILEC imposing the added cost of a line of sight escort.

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48 *See* Revisions to New York Telephone Company's 914 P.S.C. Tariff, filed July 23, 1998.

C. The Commission Should Prevent ILECs From Imposing Restrictions On The Types Of Equipment CLECs May Collocate In A Central Office

1. The Commission Should Specifically Find That RSMs, DSLAMs And Routers May Be Collocated In The Central Office

Intermedia strongly supports the Commission's tentative conclusion that "incumbent LECs should not be permitted to impede competing carriers from offering advanced services by imposing unnecessary restrictions on the type of equipment that competing carriers may collocate."[49] In response to the Commission's request for comment regarding whether CLECs should be allowed to collocate equipment that includes switching functionality, or whether other restrictions should be placed upon collocated equipment,[50] Intermedia submits that the Commission must allow CLECs to collocate equipment that includes switching capability, and the Commission's collocation rules should expressly provide for the collocation in ILEC central offices of remote switching modules ("RSMs"), Digital Subscriber Line Access Multiplexers ("DSLAMs") and routers (which are packet-switching equipment). Switching capabilities are being integrated into various types of advanced equipment, as the intelligence of the switch is migrated out of the central office and ever closer to the end user.

In fact, the concerns that prompted the Commission to exclude switching equipment from equipment that must be collocated seven years ago simply to not apply at this

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49 *NPRM* at ¶129.

50 *NPRM.* at ¶¶ 130-131.

time. When it first promulgated its collocation rules, the Commission provided for collocation for the provision only of special access services, and excluded switched access collocation until it could complete its reform of the existing access charge structure.[51] Moreover, the Commission was focused only on the provision of collocation for access, not local, services.[52] Finally, the Commission also expressed concerns that placement of categories of equipment outside of network channel terminating equipment would exhaust central office space.[53]

Since that time, CLECs have obtained authority to provide competitive local services, and as technology has evolved, intelligent equipment has become smaller, and the traditional distinctions between equipment that performs hubbing and routing functions and equipment that performs switching functions have begun to disappear. Both of these trends compel the Commission to revisit its former restrictions on the collocation of switching equipment.

The Commission has asked parties urging it to allow collocation of switching and other equipment to cite the provisions of the Act which authorize the Commission to require such collocations.[54] The plain language of § 251(c)(6) of the Act authorizes the Commission to require the collocation of RSMs, DSLAMs and routers. Section 251(c)(6) requires ILECs to

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51 *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7420 (1992).

52 *Id.* at 7413-14.

53 *See id.* at 7414.

54 *NPRM* at ¶130.

provide just, reasonable, and nondiscriminatory "physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." As the Commission correctly points out in the *NPRM* "the pro-competitive provisions of the 1996 Act apply equally to advanced services and to circuit-switched voice services. Congress made clear that the Act is technologically neutral and is designed to ensure competition in all communications markets."[55] Therefore, in adopting national collocation standards, the Commission should exercise its authority under the Act to require ILECs to allow the physical collocation of remote switching modules, DSLAMs and routers. To the extent that restrictions are placed on these types of equipment, or the functionality thereof, the technologically-neutral underpinnings of the Act would be violated. Moreover, equipment restrictions would nullify the Commission's finding that "incumbent LECs must provide requesting telecommunications carriers with unbundled loops capable of transporting high-speed digital signals, and must offer unbundled access to the equipment used in the provision of advanced services...."[56] Without the ability to collocate the necessary equipment, having unbundled access to high-speed loops is meaningless.

2. The Commission Should Allow Enhanced Services Equipment To Be Collocated In Central Offices

In the *NPRM,* the Commission seeks comment on its tentative conclusion that it "should decline to require collocation of equipment used to provide enhanced services."[57] The

55 *NPRM* at ¶11.

56 *NPRM* at ¶11.

57 *NPRM* at ¶132.

Commission posits questions regarding the effect this restriction may have on the provision other advanced services, and whether the collocation of other equipment in the collocation space will encourage the widespread deployment of advanced services. Intermedia submits that such restrictions are not only contrary to the Act, but will slow to a trickle the deployment of advanced services.

Prior to the adoption of the Telecommunications Act of 1996, the FCC defined "basic services" as "the common carrier offering of transmission capacity for the movement of information."[58] In general, a basic service transmits information generated by a customer from one point to another, without changing the content of the transmission. Thus, the "basic" service category is intended to define the transparent transmission capacity that makes up conventional communications service. In contrast, the FCC defined "enhanced services as:

> services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information.[59]

The "enhanced" service category includes, among others, net Internet protocol conversions and electronic mail. Under the Commission's current rules Internet routers and equipment associated with IP telephony would fall within the category of equipment used to provide enhanced services. Therefore, continued Commission-imposed restrictions on the

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58 FCC, *Second Computer Inquiry,* 77 FCC 2nd 384, 420 (1980).

59 47 C.F.R. § 64.702(a).

collocation of equipment used to provide enhanced services would effectively prevent the collocation of new generations of equipment that are critical to the deployment of advanced services. Networks are continuing their march toward packet-switched technology, and technological convergence is on the horizon. Moreover, precluding the collocation of internet related equipment would, as stated above, violate the technologically neutral underpinnings of the Act.[60] If the Commission's real goal is "to ensure competition in all communications markets," then the Commission should not preclude the collocation of all enhanced services equipment.[61]

At the same time, Intermedia agrees that some limits on collocated equipment must be maintained in order to prevent space exhaust and to maximize available central office space. The Commission could address these concerns by precluding the collocation of databases rather than all enhanced services equipment. The rule would effectively preclude the collocation of voice messaging, and similar databases, which are not necessary for network interconnection or access to UNEs. Intermedia is sensitive to the Commission's concerns regarding space exhaustion in central offices, and therefore would support limiting collocation of equipment to equipment that fits a standard 100 sq. ft. collocation cage. Such a restriction would prevent competitors from warehousing collocation space and would conserve scarce space in the central office.

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60 *NPRM* at ¶ 11.

61 *NPRM* at ¶ 11.

Intermedia supports the Commission's tentative conclusion that all equipment placed on ILEC premises be compliant with NEBS safety standards. There is, however, no reason to require that equipment meet NEBS performance requirements.[62] Rather, CLECs must be free to determine for themselves the types of equipment that will provide optimal functionality of their networks. Intermedia hastens to add that the NEBS process for promulgating technical standards for new technologies is often a long and Byzantine process, and in the instance of some new technologies, the NEBS standards may not be forthcoming. Therefore, Intermedia proposes that the Commission adopt a rule allowing CLECs to collocate any equipment in a central office that the ILEC itself utilizes in its own network.

With respect to the allocation of collocation space, Intermedia supports the Commission's conclusion that ILECs be required to offer collocation arrangements to CLECs on the same terms and at the same rates that ILECs offer such arrangements to their advanced services affiliates.[63] This conclusion logically and necessarily follows from the Act's strictures against unreasonable discrimination.

D. Specific Collocation Issues

Intermedia strongly supports the proposition that if an ILEC offers a particular collocation arrangement is one area, that arrangement should be presumptively considered to be technically feasible at all other ILEC offices.[64] This rule is necessary to protect against ILEC

62 *NPRM* at ¶ 134, n. 250.

63 *NPRM* at ¶ 137.

64 *NPRM* at ¶ 139.

discrimination against CLECs and is clearly in accord with the pro-competitive goals of the Act. Below, Intermedia discusses other specific collocation issues.

1. Cross Connects

As Intermedia notes above, we support the approach endorsed in the *Texas Arbitration*, which gives CLECs collocated in ILEC central offices an unrestricted right to install their own cross-connects between collocation arrangements. The CLEC's right to cross-connect extends to: collocation arrangements located anywhere within the central office, including arrangements located on different floors; collocation arrangements of other collocated CLECs; a cross-connects to virtual collocation arrangements. ILEC intransigence on this issue requires that the Commission specifically require ILECs to allow CLECs to perform their own cross-connects free of restrictions.

The position taken by BANY, set forth above, demonstrates clearly the barriers facing CLECs on this issue. Allowing CLECs to utilize common racking and dedicated support would best promote the deployment of advanced data services by allowing CLECs to meet their interconnection needs.

Forcing CLECs to purchase, for example, BANY's DTS service imposes unnecessary, and likely excessive, costs on collocated CLECs, and prevents CLECs from using their own technicians to run simple cross-connects between their collocated equipment and the equipment of another collocated CLEC. As a result, CLECs are unable to perform such connections at their own cost, and must instead pay the ILEC's tariffed rates -- which typically include loadings for ILEC labor and other non-direct cost elements. Thus, ILECs not only

prevent CLECs from realizing any cost efficiencies they can generate by doing the connections themselves, but they impose rates on CLECs that are likely in excess of the ILEC's own TELRIC costs.

For these reasons, Intermedia urges the Commission to clarify that collocated CLECs are free to perform their own cross-connects between their equipment and the equipment of other CLECs without restriction. Specifically, the Commission should clarify that ILECs may not require CLECs to purchase ILEC cabling services or dedicated racking in order to join collocation arrangements housed in different collocation spaces in the central office. The Commission should also find that CLECs are free to perform all labor associated with the installation of cross-connects between their equipment and any other collocated CLECs arrangements, including virtual arrangements and arrangements located on different floors of the central office. Allowing CLECs to connect non-contiguous physically and virtually collocated equipment is the best mechanism that the Commission can adopt to ensure that CLECs have a variety of options to meet their interconnection needs, and thereby speed the deployment of advanced services.

2. Alternative Physical Collocation Arrangements

Intermedia strongly supports the Commission's conclusion that ILECs be required to offer alternative collocation arrangements, including shared cages housing multiple CLECs;

small collocation cages (of less than 100 sq. ft.); and cageless collocation arrangements.[65] As Intermedia indicates above, the Commission should adopt a number of specific provisions adopted or under consideration by the various state commissions. For example, the NYPSC has conducted an comprehensive analysis of alternative collocation arrangements utilizing a pioneering "collaborative" approach in a proceeding devoted exclusively to studying alternative arrangements.[66] The NYPSC has developed an extensive record on the subject, and Intermedia urges the Commission to adopt the alternative collocation solutions such as those under consideration in bellwether states such as New York.

3. Virtual Collocation

The Commission seeks comment on "measures that would facilitate the use of virtual collocation for the provision of advanced services."[67] Virtual collocation puts CLECs at a great disadvantage by denying them access to the ability to provision, install, and maintain their own equipment, and thereby ensure the quality, integrity, and performance of their network. Obviously, virtual collocation is never a substitute for physical collocation, but the Commission can establish virtual collocation rules that begin to approximate the conditions of physical collocation.

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65 *NPRM* at ¶¶ 137-138.

66 *See Order Instituting* NY Case 98-C-0690 *Proceeding on the Motion of the Commission to Examine Methods by Which Competitive Local Exchange Carriers Can Obtain and Combine Unbundled Network Elements* (May 6, 1998).

67 *NPRM* at ¶ 148.

Specifically, Intermedia urges the Commission to specifically allow CLECs to hire ILEC-approved contractors to combine UNEs in any virtual collocation arrangement, and further, the Commission should clarify that ILECs may not mandate the use of a security escort when the ILEC-approved contractor is performing provisioning, installation, maintenance, or repair work. The bottom line is that CLECs should be allowed to perform any function in a virtual arrangement that it can do in a physical arrangement. The Commission must be vigilant in promulgating its rules for these arrangements to prevent ILECs from larding them with hidden costs for things such as site surveys. Moreover, Intermedia urges the Commission to adopt, as part of its rules, a presumption that to the extent that one ILEC offers a particular collocation arrangement, "such a collocation arrangement should be presumed to be technically feasible at other ILEC premises." [68] Such a requirement is simply reaffirmation of the nondiscrimination mandate of the Communications Act.

4. Security Issues

The Commission tentatively concludes that "carriers should be able to resolve any security concerns raised by cageless collocation," and seeks comment on security arrangements associated with physical and virtual collocation.[69] It is Intermedia's position that CLECs should be allowed to determine for themselves the type and cost of security they require for the equipment that they are physically collocating. To address security concerns in cageless physical collocation environments which house one or more CLECs in a separate area of the ILEC central

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68 *NPRM* at ¶ 139.

69 *NPRM* at ¶ 141.

office (i.e. SCOPE in New York), Intermedia proposes the following security requirements: (1) CLEC, at their option, may install NEBS compliant cabinets on the portions of the racks they occupy; (2) the name of the collocating party must be clearly displayed in large block letters on both the front and back of the equipment locker; (3) the collocator must outline, using color-coded floor tape, the footprint associated with their equipment; (4) ingress and egress from the common collocation environment should be either electronically, or manually logged, as determined by the protocol in place at the particular ILEC central office; (5) collocators, at their option and in cooperation with the ILEC, should have the right to install and maintain video surveillance equipment within the common collocation area.

The Commission should not allow ILECs to unilaterally impose unreasonable and burdensome security measures upon CLECs. Intermedia has a wealth of experience in dealing with physical collocation in its own central offices and should be allowed to draw upon that experience in ascertaining its security needs in ILEC central offices where it is collocating equipment. CLEC provisioning, maintenance and repair activities associated with virtual collocation arrangements do not raise any incremental security issues that cannot be addressed by normal supervision and prudent access rules; no special security arrangements are necessary.

5. Provisioning Intervals

As Intermedia indicated above, the Commission should adopt the 35 business day provisioning intervals for collocation space agreed upon by CLECs and Southwestern Bell in the Texas collaborative. These intervals strike an equitable balance between CLEC needs for timely access to collocation arrangements, and the competing demands upon ILECs for collocation

space in an expeditious manner. Further, the Commission should adopt a provision to allow CLECs to obtain liquidated damages from ILECs who miss provisioning intervals.

6. Verification of Space Exhaustion

Intermedia strongly supports the Commission's conclusion that ILECs that deny requests for physical collocation due to space limitations allow CLECs to tour the ILEC's premises.[70] As the Commission is clearly aware, under the status quo, CLECs are often forced to accept ILEC's conclusory denials of collocation space. Allowing CLECs to verify for themselves space constraints in the central office will force ILECs to provide justification for denials of space, and will allow the parties to sharpen issues regarding collocation disputes in the event that they are litigated. In addition, Intermedia also supports the requirement that ILECs provide reports regarding available collocation space, including the amount of space available, the number collocators, modifications to space since the last reporting period, and measures the ILEC is taking to make additional collocation space available.[71] Intermedia further supports the Commission's conclusion that ILECs must provide detailed information regarding the cost of collocation at all ILEC offices.[72]

7. Costs of Collocation

Intermedia recommends that the Commission adopt minimum national standards for ILEC recovery of nonrecurring costs for collocation, including the conditioning of central

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70 *NPRM* at ¶ 146.

71 *NPRM* at ¶ 147.

72 *NPRM* at ¶ 147.